



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2009-0807; FRL-9783-6]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Ohio; Ohio Ambient Air Quality Standards; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects an error in the codification in an October 26, 2010, final rule under the Clean Air Act. This rule approved revisions to Ohio regulations that consolidated air quality standards in a new chapter of rules and adjusted the rule references accordingly in various related rules. Of particular note is a revision that adjusted the provision for measurements for comparison with the particulate matter air quality standards. EPA erroneously codified approval of the entirety of the rule, which may be misread as having inadvertently approved several other provisions which were not addressed in the October 26, 2010 final rule, and which EPA in separate rulemaking had proposed to disapprove. Therefore, EPA is correcting its action to clarify the codification to show that only one paragraph of this rule was approved. This action simply makes the codification consistent with the approval.

**DATES:** This final rule is effective on [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, summerhays.john@epa.gov.

**SUPPLEMENTARY INFORMATION:** On October 26, 2010, EPA published a final approval of Ohio rules consolidating the State's air quality standards into Ohio Administrative Code (OAC) 3745-25 and modifying an assortment of related rules, mostly providing test methods for measurements used to assess attainment of those standards, so that these related rules would properly reference the relocated air quality standard rules. This action was published at 75 FR 65572 as a direct final rule.

In codifying the approval of these rules, EPA erroneously appeared to approve the entirety of the modified rules, even though in some cases only one paragraph was addressed or modified. OAC 3745-17-03 included pertinent revisions in paragraph (A) specifying test methods for the particulate matter air quality standards. However, OAC 3745-17-03 also included numerous unrelated revisions that had not been previously approved, most notably including revisions that EPA had proposed

to disapprove (see 70 FR 36901, published June 27, 2005). EPA's notice of direct final rulemaking published October 26, 2010, provided no discussion of the issues related to the other sections of OAC 3745-17-03, reflecting the fact that EPA intended only to approve and codify the revisions in OAC 3745-17-03(A). Therefore, EPA today is correcting the codification for that action to indicate that only OAC 3745-17-03(A) of that rule is approved. This makes the codification match the approval.

**Correction**

In the codification published in the Federal Register on October 26, 2010 (75 FR 65572), on page 65574 in the second column, the paragraph numbered (c)(138)(i)(A), erroneously reading: "Ohio Administrative Code Rule 3745-17-03 'Measurement methods and procedures.', effective April 18, 2009," is corrected to read: "Paragraph (A) of Ohio Administrative Code Rule 3745-17-03, 'Measurement methods and procedures.', effective April 18, 2009."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely correcting an incorrect codification in a previous action. The corrected codification reflects the revisions that EPA approved in its direct final rule. We find that this constitutes good cause under 5 U.S.C. 553(b) (B). Thus, notice and opportunity for public comment are unnecessary.

#### **Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small

governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential

litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an

effective date of [insert date of publication in the Federal Register]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This correction to 40 CFR 52 for Ohio is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate matter, Reporting and recordkeeping requirements.

Dated: February 11, 2013

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.1870 is amended by revising paragraph

(c)(151)(i)(A) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(151) \* \* \*

(i) \* \* \*

(A) Paragraph (A) of Ohio Administrative Code Rule 3745-17-03, "Measurement methods and procedures.", effective April 18, 2009.

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